

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>PATTY GOODBLOOD,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 96-200-B</b>
	)	
<b>SPRINGFIELD TERMINAL RY. CO.,</b>	)	
	)	
<b>Defendant</b>	)	

***MEMORANDUM OF DECISION***<sup>1</sup>

The defendant, Springfield Terminal Railway Company (STRC), has moved for summary judgments on both counts of the plaintiff, Patty Goodblood's, complaint. Goodblood seeks damages pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000h-6 (1994) (Title VII), and the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 - 4633 (1989 & Pamph. 1996) (MHRA), alleging that her employer, STRC, discriminated against her on the basis of her gender and retaliated against her after she filed complaints with the Maine Human Rights Commission (MHRC). In support of its motion, STRC contends that certain of Goodblood's claims are time-barred, and that all of her claims either are subject to interpretation under the Railway Labor Act, 45 U.S.C. §§ 151 - 188 (1986 & Supp. 1997) (RLA), or simply are without merit. Although concluding that any incident stemming from 1992 is time-barred for purposes of supporting her claims, the Court nonetheless finds that Goodblood's claims are not subject to the RLA's provisions and that Goodblood has generated genuine issues of material fact for purposes of surviving STRC's motion. Accordingly, the Court grants STRC's motion in part and denies it in part.

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

## **I. Summary Judgment**

A summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A material fact is one which has the ‘potential to affect the outcome of the suit under applicable law.’” *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

## **II. Background**

Goodblood is employed as a hostler by STRC, in which capacity she helps to maintain and move train engines in the railway's Waterville terminal. Out of the four individuals employed as hostlers at the work site, she is the only female. She alleges that after she brought a 1990 complaint against STRC before the MHRC for sex discrimination in employment (which resulted in a finding in her favor by the MHRC), she has been subjected to continuing employment discrimination on the basis of her gender, as well as retaliation for her filing the 1990 complaint and a more recent 1995 complaint. The gravamen of Goodblood's complaint is that she has been treated by STRC less favorably than men in the same or similar work positions.

Although she alleges generally that there have been at least thirty separate incidents of discriminatory conduct by her employer against her, Goodblood specifically lists the following in

her pleadings as examples of her being treated less favorably than the men employed by STRC as hostlers: she has been "forced to work" overtime more often than the male hostlers; she has been required to perform extra work, such as cleaning toilets and the lunchroom, whereas the male hostlers have not been required to do so; she has been subjected to disciplinary hearings and "bad stops" as a result of behavior for which the male employees were not disciplined; and she has been denied without explanation her occasional requests for personal days, including a request for time off to attend a cousin's funeral. Goodblood also cites the establishment of seniority policies at the railyard, and the determination of shift hours and work assignments as examples of ways in which STRC discriminated against her due to her gender. In addition to seeking compensatory and punitive damages, Goodblood seeks lost wages for the time that she has had to appear at what she terms "unwarranted" disciplinary hearings, and for the time that her pay was "docked" by STRC as a result of such hearings.

### **III. Discussion**

STRC contends that the Court is without jurisdiction to entertain this matter due to the fact that Goodblood's employment contract with it is governed by the terms of a collective bargaining agreement entered into between STRC and Goodblood's union, the Brotherhood of Locomotive Engineers (the BLE agreement). STRC maintains that, as a laborer, the plaintiff's employment also is governed by the terms of a collective bargaining agreement entered into between it and the United Transportation Union (the UTU agreement). STRC also contends that certain of the incidents referenced by Goodblood in support of her complaint are time-barred, and that the remaining claims must be dismissed as a matter of law because Goodblood has failed to present a *prima facie* case of gender discrimination.

**A. Preemption by the RLA**

The Court first addresses STRC's contention that this Court is without jurisdiction to entertain this matter because, pursuant to the RLA, Goodblood's claims are subject to the mandatory grievance procedures outlined in the BLE and UTU agreements.<sup>2</sup> In response, Goodblood contends that her Title VII and MHRA claims are not "minor disputes" under the RLA and therefore are not subject to the mandatory arbitration provisions set forth in the collective bargaining agreements.

"Disputes between employees and Carriers arising out of the interpretation or application of the collective bargaining agreement . . . [are] commonly referred to as 'minor disputes,'" *Sirois v. Business Express, Inc.*, 906 F. Supp. 722, 727 (D. N.H. 1995) (citations and internal quotations omitted). "All 'minor disputes' must be settled pursuant to the arbitration procedures established by the RLA." *Id.* (citing *Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 322 (1972)); *see also Brotherhood of Locomotive Engineers v. Boston & Maine Corp.*, 788 F.2d 794 (1st Cir. 1986). A "minor dispute" is generally regarded as one that "may be conclusively resolved by interpreting the existing [collective bargaining] agreement." *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, 491 U.S. 299, 305 (1989). Such disputes were intended by Congress to be resolved through the grievance procedures of the RLA rather than in federal court. *Pyles v. United Air Lines, Inc.*, 79 F.3d 1046, 1050 (11th Cir. 1996) (citing *Union Pacific R.R. v. Sheehan*, 439 U.S.

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<sup>2</sup> The Railway Labor Act cannot, of course, preempt Title VII, a federal statute, as it can state law claims that involve minor disputes. *See Hirras v. National R.R. Passenger Corp.*, 10 F.3d 1142, 1146 n.9 (5th Cir. 1994), *rev'd on other grounds*, \_\_U.S.\_\_, 114 S.Ct. 2732 (1996) (citing *Britt v. Grocers Supply Co.*, 978 F.2d 1441, 1447 (5th Cir. 1992) ("traditional preemption analysis does not apply in a conflict between two federal statutes"), *cert. denied*, \_\_U.S.\_\_, 113 S.Ct. 2929 (1993)) (other citations omitted). "The inquiry is similar to preemption analysis, however, because both preemption of state law and preclusion of federal statutory remedies are questions of congressional intent." *Felt v. Atchison, Topeka & Santa Fe Ry. Co.*, 60 F.3d 1416, 1419 (9th Cir. 1995).

89, 94 (1978)). Also, when the resolution of a state-law claim requires an interpretation of the collective bargaining agreement, the claim is preempted and must be submitted to arbitration. *Andrews*, 406 U.S. at 324. The Supreme Court recently had occasion to clarify further the meaning of the term "minor disputes," stating that they are "grounded" in the collective bargaining agreement, *Hawaiian Airlines, Inc. v. Norris*, \_\_\_U.S. \_\_\_, \_\_\_, 114 S.Ct. 2239, 2245 (1994), and involve "duties and rights created or defined by the collective bargaining agreement." *Id.* at 2247. The Court in *Hawaiian Airlines* emphasized that a minor dispute cannot involve rights arising from sources outside the agreement: "Obviously, to say that a minor dispute can be 'conclusively resolved' by interpreting the collective bargaining agreement is another way of saying that the dispute does not involve rights that exist independent of the collective bargaining agreement." *Id.* at 2250.

STRC contends that Goodblood's claims relate to the terms and conditions of her employment and, as such, must be dealt with pursuant to the railroad's internal dispute resolution processes set forth in Article 10 of the BLE agreement and in Rules 10 and 18 of the UTU agreement. The Court concludes, however, that Goodblood's Title VII rights, which the collective bargaining agreements never expressly reference, "exist independent of the collective bargaining agreement[s]." *Hawaiian Airlines*, 114 S.Ct. at 2239. Goodblood's Title VII rights thus are not "created or defined" by the collective bargaining agreements. *Id.* at 2250. Moreover, whether Goodblood has a meritorious Title VII claim cannot be "conclusively resolved" by consulting the collective bargaining agreements. *Felt*, 60 F.3d at 1420 (citing *Atchison, T. & S.F.R. Co. v. Buell*, 480 U.S. 557, 564-565 (1987) (holding that RLA did not preclude suit under FELA for workplace injury, even though injury was caused by conduct that may have been subject to arbitration under the

RLA)) (citation omitted). There also has been no express agreement in this case by the parties to arbitrate Title VII disputes.

The Court thus concludes that it does in fact have jurisdiction over this action, and accordingly denies STRC's motion as it relates to this argument.

***B. Statutes of limitation***

STRC also contends that certain of Goodblood's claims are time-barred pursuant to the applicable statutes of limitation set forth in Title VII and the MHRA. In particular, STRC maintains that Goodblood's claims stemming from 1992 relating to the changing of her shift hours and the reconfiguration of her job duties must be dismissed because they do not fall within the applicable statutes of limitation set forth in Title VII and the MHRA. Goodblood contends that because the 1992 incidents are part of a pattern of continuing discrimination on the part of her employer, the claims may be reached pursuant to an exception to the general rule regarding timely filing of charges with the Equal Employment Opportunity Commission (EEOC) and the MHRC.

Title VII requires an employee to file an administrative charge as a prerequisite to commencing a civil action for employment discrimination. *Lattimore v. Polaroid Corp.*, 99 F.3d 456, 464 (1st Cir. 1996); 42 U.S.C. § 2000e-5(f) (1994). The same requirement applies to Goodblood's claims under the MHRA. The Court's analysis of the federal and state statutes is identical. See *Weeks v. State of Maine*, 866 F. Supp. 601, 603 n.2 (D. Me. 1994) (citing *Bowen v. Department of Human Servs.*, 606 A.2d 1051, 1053 (Me. 1992)). In Maine, a "deferral state," the charge of discrimination must be filed within 300 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1). The record reveals that Goodblood filed her initial complaint with the MHRC and the EEOC on November 3, 1995. She later filed an amended complaint on March 11,

1996. That amendment was treated by the MHRC as a new complaint. In order for Goodblood's claims relating to incidents that occurred in 1992 to have been timely filed pursuant to Title VII, she had to have filed her charge at least no later than October 27, 1993, which is 300 days after December 31, 1992. Goodblood did not, however, file her charge with the MHRC until November 3, 1995, approximately one year after the last possible date for filing with the EEOC. Her claims likewise were not timely filed for purposes of the MHRA. The relevant time period under 5 M.R.S.A. § 4613 (1989 & Pamph. 1996) is two years. The 1992 events concerning the institution of twelve-hour shifts and the modifications of shift hours thus fall outside of the statute of limitations, which expired on or before December 31, 1994. Despite these time limitations, Goodblood maintains that these incidents may be relied upon to support her claims because they are part of an ongoing discriminatory pattern at work. There are two types of continuing violations recognized in the First Circuit: serial violations and systemic violations. *Sabree v. United Bhd. of Carpenters and Joiners Local No. 33*, 921 F.2d 396, 400 (1st Cir. 1990). If Goodblood's claims satisfy one of these exceptions, the Court may consider events that allegedly took place outside of the limitations period in 1992. *Id.*

Although Goodblood has not specifically alleged one of these two types of continuing violations as the basis for her contention that her claims are not time-barred, the Court determines that she cannot succeed on either theory. In order to avoid the relevant statute of limitations and succeed on a theory of a systemic violation, Goodblood would need to point to a discriminatory policy or practice that is ongoing at STRC. *Id.* at 400 & n.7. In such a case, so long as the policy or practice continues into the relevant limitations period, a complainant may be deemed to have timely filed her charge. *Id.* The 1992 claims at issue relate to the changing of the hours of

Goodblood's shift, the requirement that she work a twelve-hour night-shift for a two week period, and the posting of a new seniority list for the laborers' roster. Such claims do not appear, without more evidence, to be part of any systemic violation. As the plaintiff conceded in her deposition testimony, all of the other incidents of alleged discrimination occurred as part of Patrick Walsh's tenure as manager of the yard from August 1993 through August 1996. Indeed, Goodblood admits that the incidents stopped immediately following his departure and that her work life now is greatly improved. Thus, the Court is not satisfied that Goodblood has presented sufficient evidence of an ongoing systemic violation involving a policy that continued into the relevant limitations period such that the evidence relating to 1992 is admissible in support of her claims. The preponderance of evidence does not "establish that some form of intentional discrimination against the class of which plaintiff was a member was the company's standard operating procedure." *Jewett v. International Tel. & Tel. Corp.*, 653 F.2d 89, 91-92 (1st Cir. 1981) (citation and internal quotations omitted).

Likewise, Goodblood's claims do not overcome the statute of limitations pursuant to any serial violation theory. A serial violation is "composed of a number of discriminatory acts emanating from the same discriminatory animus, each act constituting a separate wrong actionable under Title VII." *Sabree*, 921 F.2d at 400 (citation and internal quotations omitted). Serial violations are not actionable unless "at least one act in the series . . . fall[s] within the limitations period." *Id.* Moreover, there must be a "substantial relationship between the timely and the untimely claims" in order for there to be a continuing violation. *Id.* at 401. The evidence does not support the existence of a serial violation in this case. Not only is it far from certain whether the 1992 actions alleged even may be said to constitute discrimination, they do not appear to be based on Goodblood's gender. The two 1992 incidents relating to the changing of shift hours and the reconfiguration of job duties



affected all hostlers, male and female alike. Nor is there any substantial relationship evident between the timely and untimely claims.

The Court is not persuaded that Goodblood has presented sufficient evidence of either a serial or systemic violation to be excused from the usual rule regarding compliance with the statutes of limitation. Accordingly, the plaintiff may not rely on any of the 1992 incidents alleged in her complaint as a basis for recovery in this action. Partial summary judgments in favor of STRC therefore are entered with respect to these claims.

**C.     *The Merits***

Finally, STRC contends that it is entitled to judgments as a matter of law on the merits of Goodblood's complaint because she has failed to establish a *prima facie* case of gender discrimination pursuant to *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

In a case such as this involving a disparate treatment claim under Title VII where discriminatory intent must be inferred from circumstantial evidence, the familiar burden-shifting framework of *McDonnell Douglas* governs. In this case, the standard requires that the plaintiff establish a *prima facie* case by demonstrating that she was (i) a member of a protected class, and (ii) unfairly treated as compared to similarly situated male employees. After the plaintiff has satisfied her burden, a presumption is created that the employer unlawfully discriminated against her. The burden of production then is shifted to the defendant, who must rebut the inference by articulating some legitimate, nondiscriminatory reason for its actions. If the employer satisfies its burden, the original inference of discrimination is extinguished, and the plaintiff must show that the employer's alleged justification is a mere pretext for discrimination. *Vega v. Kodak Caribbean, Ltd.*, 3 F.3d 476, 479 (1st Cir. 1993).

In the case at bar, it is clear that the plaintiff, a woman, is a member of a protected class. She also has alleged sufficient facts and generated sufficient evidence to raise a genuine issue for the fact finder's determination that she has been treated differently by her employer in a host of ways as compared to similarly situated male colleagues. The Court is satisfied that Goodblood has met her burden of proving this *prima facie* case when it examines her evidence that she was treated differently based on her requests for personal days, the number of times she was forced to work certain shifts, the disciplinary hearings she was subjected to, and the kinds of busy and cleaning work to which she was assigned. The Court thus denies STRC's motion for summary judgments on the merits of Goodblood's complaint.

#### **IV. Conclusion**

For the foregoing reasons, the Court thus **ORDERS** that a partial summary judgment is hereby **GRANTED** in the defendant's favor as it relates to any of the plaintiff's evidence stemming from 1992 in support of her complaint, but that the defendant's motion for summary judgments is **DENIED** as it relates to the remainder of the plaintiff's complaint.

***SO ORDERED.***

Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated this 7th day of May, 1997.